

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

JOHNNY M. BAGLEY,

Plaintiff,

v.

CIVIL ACTION NO. 5:08-cv-00187

T. R. CRAIG, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER
ADOPTING PROPOSED FINDINGS AND RECOMMENDATION**

The Court has reviewed the Plaintiff's *Complaint* (Document No. 3), in which he alleges that Defendants acted with negligence and deliberate indifference in providing treatment for his knee injury and that he was denied medical treatment while he was housed at FCI Beckley. By *Standing Order* (Document No. 4) entered on March 21, 2008, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On October 1, 2010, the Magistrate Judge found that Plaintiff had made ample allegations of Defendants' tortious and unconstitutional conduct, granted Plaintiff's Application to Proceed Without Prepayment of Fees, and directed Plaintiff to serve the summonses and complaint upon Defendants pursuant to Rule 4 of the Federal Rules of Civil Procedure.¹

On January 24, 2011, Plaintiff filed a Motion for an Extension of Time so that he could retain counsel (Document No. 17.) On January 26, 2011, the Magistrate Judge stayed this case in order

¹ Plaintiff is no longer in custody.

to allow Plaintiff adequate time to secure an attorney. Plaintiff was directed to notify the Court within sixty (60) days if he was unable to secure counsel (Document No. 18.)

On October 17, 2011, the Magistrate Judge terminated the stay and reinstated this case to the active docket after finding that Plaintiff had failed to respond to the January 26, 2011 Order (Document No. 19.) On the same day, the Magistrate Judge VanDervort submitted his *Proposed Findings and Recommendation* (“PF&R”) (Document No. 20) wherein it is recommended that this Court dismiss Plaintiff’s Complaint for his failure to prosecute this matter and remove this case from the Court’s docket.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner’s right to appeal this Court’s Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In his PF&R, Magistrate Judge VanDervort advised the parties that any objections to the PF&R were due within seventeen days of the filing of the proposed findings and recommendation. Consequently, any objections to the PF&R were due on November 3, 2011. To date, no party has filed any objections to the Magistrate Judge’s *Proposed Findings and Recommendation*.

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that Plaintiff’s Complaint be **DISMISSED** and that this matter be **REMOVED** from the Court’s

docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: November 9, 2011

A handwritten signature in blue ink, reading "Irene C. Berger", is written over a horizontal line.

IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA